

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JASON WEI LOCASALE,)	
)	
Plaintiff,)	
)	
v.)	1:20-CV-87
)	
DUKE UNIVERSITY and DONALD)	
PATRICK MCDONNELL in his)	
individual and official capacity,)	
)	
Defendants.)	

ORDER

The plaintiff, Jason Wei Locasale, has filed suit against his employer, Duke University, and supervisor, Dr. Donald McDonnell, asserting twenty claims against them. Doc. 17. The defendants have filed a motion to dismiss all claims for failure to state a claim on which relief may be granted. The Court will rule on the motion using the causes of action as named and enumerated in the amended complaint.

The motion will be denied as to the First,¹ Second,² Third,³ and Fourth⁴ causes of actions against Duke. The motion will be denied as to the Third⁵ cause of action against Dr. McDonnell. The motion will be denied as to the Ninth⁶ cause of action against both defendants.

¹ First Cause of Action: Race, Color, and National Origin Discrimination, Title VII, ¶¶ 211-219.

² Second Cause of Action: Retaliation, Title VII, ¶¶ 220-231.

³ Third Cause of Action: race and color discrimination and retaliation, § 1981, ¶¶ 232-239.

⁴ Fourth Cause of Action, Breach of Contract, ¶¶ 240-251.

⁵ Third Cause of Action: race and color discrimination and retaliation, § 1981, ¶¶ 232-239.

⁶ Ninth Cause of Action, Negligent Misrepresentation, ¶¶ 303-316.

The First,⁷ Second,⁸ and Twelfth⁹ causes of action do not state claims on which relief may be granted as against Dr. McDonnell. The law is clear that only the employer is a proper defendant for these claims on the facts alleged. These claims against Dr. McDonnell will be dismissed. The Court does not understand the Fourth¹⁰ Cause of Action for breach of contract to be directed against Dr. McDonnell, but to the extent it is, it fails to state a claim and will be dismissed.

The Fifth¹¹ and Sixth¹² causes of action fail to state a claim and fail to state the circumstances constituting the fraud with particularity. They will be dismissed.

The Seventh¹³ cause of action fails to state a claim because there are no facts alleged which give rise to a plausible inference that a fiduciary relationship existed.

To the extent the Twelfth¹⁴ Cause of Action asserts ADA discrimination by Duke, the motion to dismiss will be granted; placing someone on paid leave or requiring a fitness for duty evaluation are not adverse actions for purposes of a discrimination claim. To the extent the Twelfth Cause of Action asserts retaliation in violation of the ADA by

⁷ First Cause of Action: Race, Color, and National Origin Discrimination, Title VII, ¶¶ 211-219.

⁸ Second Cause of Action: Retaliation, Title VII, ¶¶ 220-231.

⁹ Twelfth Cause of Action, Discrimination and Retaliation in Violation of the ADA, ¶¶ 329-342.

¹⁰ Fourth Cause of Action, Breach of Contract, ¶¶ 240-251.

¹¹ Fifth Cause of Action, Fraud, ¶¶ 252-265.

¹² Sixth Cause of Action, Fraud in the Inducement, ¶¶ 266-286.

¹³ Seventh Cause of Action, constructive fraud, ¶¶ 287-297

¹⁴ Twelfth Cause of Action, Discrimination and Retaliation in Violation of the ADA, ¶¶ 329-342.

Duke for filing an EEOC charge, the complaint states a claim on which relief may be granted and can proceed.

The Eighth,¹⁵ Tenth,¹⁶ Eleventh,¹⁷ Thirteenth,¹⁸ Fourteenth,¹⁹ Fifteenth,²⁰ Sixteenth,²¹ and Seventeenth²² Causes of Action fail to state a claim against either defendant. They will be dismissed.

The Eighteenth²³ Cause of Action will be dismissed for failure to state a claim, but that does not preclude the plaintiff from relying on those theories in opposition to any defenses or facts raised by the defendants, should they be appropriate.

The Nineteenth²⁴ Cause of Action will be dismissed for failure to state a claim. It is not at all clear what the plaintiff wants the Court to declare, beyond the fact that the defendants violated various statutes or committed various torts.

The Twentieth²⁵ Cause of Action will be dismissed for failure to state a claim, as a freestanding cause of action. But to the extent injunctive relief is available as a remedy for any of the remaining causes of action, the request remains in the case.

¹⁵ Breach of Implied Covenant of Good Faith and Fair Dealing, ¶¶ 298-302.

¹⁶ Tenth Cause of Action, Unjust Enrichment (in the alternative of Breach of Contract), ¶¶ 317-324.

¹⁷ Eleventh Cause of Action, Unjust Enrichment, ¶¶ 325-328.

¹⁸ Thirteenth Cause of Action, Violation of Antitrust Laws, ¶¶ 343-355.

¹⁹ Fourteenth Cause of Action, Defamation, Slander Per Quod, ¶¶ 356-374.

²⁰ Fifteenth Cause of Action, Defamation, Slander Per Se, ¶¶ 375-384.

²¹ Sixteenth Cause of Action, Defamation Libel Per Se, ¶¶ 385-398.

²² Seventeenth Cause of Action, Defamation, Libel Per Quod, ¶ 399-410.

²³ Eighteenth Cause of Action, Equitable Estoppel, Quasi-Estoppel, Mend the Hold, ¶¶ 411-412.

²⁴ Nineteenth Cause of Action, Declaratory Judgment, ¶¶ 413-418.

²⁵ Twentieth Cause of Action, Injunctive Relief, ¶¶ 419-422.

It is **ORDERED** that the defendants' motion to dismiss the amended complaint, Doc. 23, is **GRANTED in part and DENIED in part** as follows:

1. The First, Second, Fourth, and Twelfth causes of action against Donald McDonnell are **DISMISSED**.
2. The Fifth, Sixth, Seventh, Eighth, Tenth, Eleventh, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, and Twentieth causes of action against Duke University and Donald McDonnell are **DISMISSED**.
3. To the extent the Twelfth Cause of Action asserts ADA discrimination, it is **DISMISSED**.
4. The motion is otherwise **DENIED**. The case will proceed against Duke on the First, Second, Third, Fourth, and Ninth causes of action and the Twelfth Cause of Action to the extent it asserts retaliation in violation of the ADA for filing an EEOC charge and against Donald McDonnell on the Third and Ninth causes of action.

This the 8th day of September, 2020.


UNITED STATES DISTRICT JUDGE